

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 03-0013
Tax Administration—Refunds and Interest Calculations
For Tax Years 1999, 2000, 2001

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ISSUE

I. Tax Administration—Refunds and Interest Calculations

Authority: IC § 6-2.5-6-10; IC § 6-8.1-3-3; IC § 6-8.1-6-1; IC § 6-8.1-9-1; IC § 6-8.1-10-1; 45 IAC 2.2-3-9

Taxpayer alleges that the refund amount and interest calculated thereon were calculated in error.

STATEMENT OF FACTS

Taxpayer is a lump sum contractor specializing in providing and installing insulation in new construction. In March of 2002, taxpayer submitted a claim for refund for tax years 2000 and 2001. The Department was unable to locate the refund claim and taxpayer refiled it. During that process, the Department issued the requested refund amount in July of 2002, based on the supplier's statement that tax had been paid twice over a period of 18 months. The Department conducted an audit for tax years 1999, 2000, and 2001 in October of 2002. The audit reduced the requested refunds that had already been issued to taxpayer. The auditor also made other adjustments which resulted in additional liabilities for the years under audit. Additional facts will be added as necessary.

I. Tax Administration—Refunds and Interest Calculations

DISCUSSION

Taxpayer's claim for refund alleges that the refund amount received in 2002 was insufficient and that the Department erroneously calculated the interest on that amount. Taxpayer argues that because a sales and use tax audit for tax years 1992, 1993, and 1994 did not inform him that he would be denied the 1% collection allowance if he continued his then-current collect and remit procedures, the refund and interest should be higher. In addition, taxpayer argued that since the Department was at fault for losing the original refund request and taxpayer had to refile the request, any interest on the assessment that accrued was due to the Department's error, not taxpayer's. Taxpayer argues that the erroneous refund amount issued to it before the audit was solely due to the Department's own negligence.

Taxpayer provides and installs insulation for new construction, mostly as a subcontractor in the new housing industry. Taxpayer obtains lump sum bids with no reference to sales tax, and acts as a contractor for the completion of the job. Customers do not receive invoices that break out sales tax. Taxpayer calculates the materials cost of each job and produces an internal invoice that calculates tax on the materials portion of each job. Taxpayer remits tax to the Department based on the materials used in the taxable jobs.

Taxpayer alleges that the auditor in the 1992-1994 audit "OK'd" its method of remittance, but that the auditor in the 1999-2001 audit warned taxpayer to comply with the Department's collection and remittance rules in the future. Taxpayer argues it is being punished for doing something that the Department itself approved in the prior audit. However, the original audit did not directly address taxpayer's collection method.

Taxpayer's dilemma rests on understanding the sales and use tax collection and remittance schemes. Taxpayer engages in lump sum contracting. Taxpayer owes sales tax on all purchases used in such contracts. If taxpayer does not pay sales tax, then taxpayer must accrue and remit use tax. See, 45 IAC 2.2-3-9. The previous audit did not specifically address this issue. While it may be that taxpayer was reporting tax the same way, and the previous auditor did not address it, this situation does not rise to the level of an estoppel or statutory reliance pursuant to IC § 6-8.1-3-3. Pursuant to IC § 6-2.5-6-10, taxpayer must actually collect sales tax from its customers in order to obtain the 1% collection allowance. As a lump sum contractor, taxpayer was remitting use tax that it incurred and not remitting sales tax that it had collected. The auditor adjusted taxpayer's 1999-2001 tax liabilities by removing the 1% collection allowance. That removal adjusted the refund amount downward; therefore, mathematically speaking, the interest on the refund amount also was calculated downward because of the lower refund amount.

Additionally, when taxpayer filed a claim for refund in March of 2002 pursuant to IC § 6-8.1-9-1, the amount stated in the claim was based on a statement from the insulation supplier. Both the supplier and taxpayer remitted sales tax to the Department for a period of 18 months, a situation causing taxpayer to file its refund request. But, during the audit currently at issue, the auditor compared tapes and invoices and discovered that the total did not agree with the refund claim amount which was higher. The auditor therefore adjusted the figures according to the tapes and invoices, which also impacted taxpayer's tax liabilities. Instead of being owed a refund, taxpayer ended up having to return the refunded amounts, plus interest. Taxpayer claims that interest being calculated on the amount he had to return to the Department was never discussed with him, his accountant, or his representative. Taxpayer also argues that if the Department had not lost its refund claim and had completed the 1999-2001 audit in a more timely fashion, taxpayer's interest liability would be much less. Finally, taxpayer argues that since the State had the use of its money for approximately 18 months, taxpayer should not now be assessed interest. See, IC § 6-8.1-10-1.

Interest is not waivable. See, IC § 6-8.1-10-1. Interest should be calculated from the date of the refund. That date became the new due date of the return pursuant to IC § 6-8.1-6-1.

FINDING

Taxpayer's protest concerning interest calculated on reduced refunds, additional liabilities, and the proper refund amount owed to him, is denied.